**IN THE HIGH COURT OF JUDIATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7402 OF 2004**

Jhagdu Rampher Gupta & Ors. .. Petitioners.
Vs.
Budhuram Badriprasad
Gupta & Ors. .. Respondents.

Mr.U.S.R.Singh for the petitioners.

**CORAM : D.B.BHOSALE, J.**

**DATED : 8TH SEPTEMBER, 2004**

P.C.:

. Heard Mr.Singh, learned counsel for the petitioners.

2. This petition is directed against the order dated 6th August, 2004 passed in Notice of Motion No.2818 of 2003 taken out by original defendant nos.1 to 5 in S.C.Suit No.436 of 1995. The petitioners are original defendant nos.1 to 5. The impugned order passed in the Notice of Motion reads thus :

> . "Heard, both the advocates. The Ld.Adv. for plaintiff admitted today that the affidavit of evidence was never served

on the Defendants when it was tendered or even by 24.6.2004. It is served recently and post facto of the order of no cross is passed. I, therefore, feel that it is necessary that the defendant must be given an opportunity to cross exam.

. As far as, prayers for additional issue are concerned, cannot be considered now. The issue was framed by my Ld.Predecessor. The issue above limitation and maintainable of suit can be taken up at any time as they are point of law. Therefore, there is no necessity to frame additional issue".

3. I perused the present petition and the other material placed before me. Mr.Singh, learned counsel for the petitioners-defendant nos.1 to 5 submits that the learned Judge ought to have framed the issues as prayed for by the petitioners and refusal to do so would cause grave injustice to the petitioners. No grievance was made about the first part of the order.

4. The provisions of Rule 5 Order 14 of Civil

Procedure Code confer wide powers on the court to amend issues or frame additional issues as may be necessary for determining the matters in controversy between the parties at any time before passing a decree. The issues, in the instant case, have already been framed and recording of evidence is going on. The issues which the petitioner has raised could be framed and dealt with at appropriate stage, if the court finds it necessary, before passing a decree in the suit. No interference is called for in the orders impugned in this petition filed under Article 227 of the Constitution of India. The petition, therefore, fails and is dismissed as such.

**(D.B.Bhosale, J.)**